

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CHAPPEL, CASE NO. 1:096-cv-05576-AWI DLB-PC

Plaintiff,

ORDER DENYING DEFENDANT'S REQUEST TO FILE SECOND MOTION FOR SUMMARY JUDGMENT

DICKERSON, et al.,

Defendants.

1

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on plaintiff's amended complaint filed August 5, 1996, involving allegations that defendant Dickerson was deliberately indifferent to plaintiff's safety and retaliated against plaintiff by encouraging other inmates to attack plaintiff at Corcoran State Prison. On March 14, 2007, the Court denied defendant's motion for summary judgment and on June 14, 2007, the Court denied defendant's motion for reconsideration. On June 15, 2007, defendant filed a request to file a second motion for summary judgment. Plaintiff filed an opposition to defendant's request on June 29, 2007.

Defendant requests an order allowing a second motion for summary judgment on the ground that in the order denying the motion for reconsideration, the Court stated that the evidence and arguments presented in defendant's objections to the Magistrate's Findings and Recommendations would not be considered because "a new theory cannot properly be raised in objections to Findings and Recommendations." Defendant represents that the second motion for summary judgment would reassert arguments already put forth by defendant and rejected by this Court but will present new arguments and evidence.

Defendant has not demonstrated good cause for his request. This action has been pending since 1996 and the parties have been granted numerous extensions of the deadlines, including the deadline to file dispositive motions. The Court is mindful of the goals of summary judgment. However, in this case, defendant's motion for summary judgment has been denied, reconsidered and denied again and neither defendant's motion nor prior objections convince the Court that a second motion for summary judgment would eliminate the need for a trial in this case. It is in the best interests of all parties that this case now proceed to trial without further delay.

Defendants request to file a second motion for summary judgment is therefore DENIED.

IT IS SO ORDERED.

Dated: January 16, 2008

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE